

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

JEANETTA E. ROTH, Personal Representative  
for the Estate of Robert A. Roth,

Plaintiff,

v.

ASBESTOS CORPORATION, LTD., et al.,

Defendants.

NO.

NOTICE OF REMOVAL FROM  
STATE COURT UNDER 28 USC  
§§ 1332, 1441, AND 1446

Multnomah County Cause No. 1204-  
05006

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF OREGON:

PLEASE TAKE NOTICE that Defendants General Electric Company (hereinafter  
"GE"), and CBS Corporation, a Delaware corporation, f/k/a Viacom, Inc., successor by merger  
to CBS Corporation, a Pennsylvania corporation, f/k/a Westinghouse Electric Corporation  
(hereinafter "CBS"), hereby remove this civil action to the United States District Court for the  
District of Oregon from the Circuit Court of the State of Oregon in and for the County of  
Multnomah pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, whereby this Court has subject  
matter jurisdiction because of diversity of citizenship of the parties. The grounds for removal  
are more particularly stated as follows:

NOTICE OF REMOVAL FROM STATE COURT UNDER 28 USC  
§§ 1332, 1441, AND 1446 - 1

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1           1.       The above-entitled action was commenced in the Circuit Court of the State of  
2 Oregon in and for the County of Multnomah, on April 30, 2012. Plaintiff filed this lawsuit  
3 against GE, CBS, and 22 other parties, based on the allegation that Mr. Roth was exposed to  
4 asbestos from one or more of the Defendants' products.

5           2.       On January 17, 2013, Plaintiff filed her First Amended Complaint, in which  
6 Plaintiff identified only nine defendants: (1) Fraser's Boiler Service, Inc.; (2) General Electric  
7 Company; (3) Hopeman Brothers, Inc.; (4) Ingersoll-Rand Company; (5) Kaiser Gypsum  
8 Company, Inc.; (6) Mar-Dustrial Sales, Inc.; (7) Metropolitan Life Insurance Company; (8)  
9 Owens-Illinois, Inc.; and (9) Viacom, Inc. (CBS).<sup>1</sup>

10          3.       The only remaining Oregon defendant was Mar-Dustrial Sales, Inc., which  
11 settled with Plaintiff on February 4, 2013.<sup>2</sup> As demonstrated below, all other defendants,  
12 except GE and CBS (Viacom), have settled with the Plaintiff, and GE and CBS both consent to  
13 removal of this case:

- 14           a.       Defendant Fraser's Boiler Service settled with Plaintiff on or about February 4,  
15                   2013;<sup>3</sup>
- 16           b.       Defendant General Electric Company consents to removal of this case;<sup>4</sup>
- 17           c.       Defendant Hopeman Brothers, Inc. settled with Plaintiff on or about February 5,  
18                   2013;<sup>5</sup>
- 19           d.       Defendant Ingersoll-Rand Company settled with Plaintiff on or about January  
20                   31, 2013;<sup>6</sup>

21 <sup>1</sup> See Plaintiff's First Amended Complaint as Ex. 1 to Declaration of Eliot M. Harris ("Harris Decl.").

22 <sup>2</sup> See Email from Plaintiff's counsel to Court RE: Settlement with Defendants Mar-Dustrial Sales, Inc. and  
23 Fraser's Boiler Service dated February 4, 2013, as Ex. 2 to Harris Decl.

<sup>3</sup> Id.

<sup>4</sup> See Harris Decl.

24 <sup>5</sup> See Email from Plaintiff's counsel to Court RE: Settlement with Defendants Hopeman Brothers dated February  
25 5, 2013, as Ex. 3 to Harris Decl.

<sup>6</sup> See Email from Counsel for Ingersoll-Rand to Court RE: Settlement with Plaintiff dated January 31, 2013, as  
Ex. 4 to Harris Decl.

- e. Defendant Kaiser Gypsum settled with Plaintiff on or about January 22, 2013;<sup>7</sup>
- f. Defendant Mar-Dustrial Sales, Inc. settled with Plaintiff on or about February 4, 2013;<sup>8</sup>
- g. Defendant Metropolitan Life Insurance Company settled with Plaintiff on or about January 21, 2013;<sup>9</sup>
- h. Defendant Owens-Illinois, Inc. settled with Plaintiff on or about January 23, 2013;<sup>10</sup>
- i. Defendant Viacom, Inc. consents to removal.<sup>11</sup>

4. There are only two defendants remaining and both are foreign corporations. GE is a New York corporation and CBS is a Delaware corporation. All remaining, non-settled defendants consent to the removal of this action under 28 U.S.C. § 1446(b).<sup>12</sup> The consent of a settled defendant is not required under *Estate of Martineau v. Arco Chemical Corp.*, 203 F.3d 904, 910-12 (5th Cir.2000).

5. This Notice of Removal is being filed within thirty days after GE and CBS received notice of Plaintiff's settlement with the last remaining Oregon defendant under 28 U.S.C. § 1446(b). It has been less than one year since the commencement of this action.

6. As recognized in *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68-69 (1996), cases that are not originally removable may become removable at a later date; for instance, by reason of the dismissal of a nondiverse party.

7. This case is removable under the authority cited above.

<sup>7</sup> See Letter from Plaintiff's counsel to Court RE: Settlement with Defendant Kaiser Gypsum dated January 22, 2013, as Ex. 5 to Harris Decl.

<sup>8</sup> See Ex. 2 to Harris Decl.

<sup>9</sup> See Harris Decl.

<sup>10</sup> See Email from Counsel for Owens-Illinois to Court RE: Settlement with Plaintiff dated January 23, 2013, as Ex. 6 to Harris Decl.

<sup>11</sup> *Id.*

<sup>12</sup> *Westwood Apex v. Contreras*, 644 F.3d 799, 806 (9<sup>th</sup> Cir 2011).



**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of February, 2013, I served a true and correct copy of the foregoing document on the following persons by e-mail, or U.S. Mail, First Class postage prepaid, or in another manner as indicated below:

**Via E-Mail and Legal Messenger:**

Jeffrey S. Mutnick  
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*Attorneys for Plaintiffs*

Signed at Seattle, Washington this 6<sup>th</sup> day of February, 2013.

s/Eliot M. Harris, OSB #116968  
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